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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 151.

THE AMERICAN RAILROAD COMPANY OF PORTO RICO, PLAINTIFF IN ERROR,

vs.

JULIO P. CASTRO.

BRIEF FOR DEFENDANT IN ERROR.

FREDERICK L. CORNWELL,
Attorney for Defendant in Error.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 24546

(19,991.)

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No. 151.

THE AMERICAN RAILROAD COMPANY OF PORTO RICO, PLAINTIFF IN ERROR,

vs.

JULIO P. CASTRO, DEFENDANT IN ERROR.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

BRIEF FOR DEFENDANT IN ERROR.

This suit was originally brought by Julio P. Castro, as plaintiff, for the recovery of damages for loss of life of the minor daughter of the said plaintiff on account of the fault and negligence of the defendant (Record, page 1). The cause proceeded to trial by jury, and the jury returned a verdict in favor of plaintiff in the sum of $1,600.

ARGUMENT.

As to the jurisdiction of this court over the case, the amount involved, as shown from the record, is only $1,600; so that the court is without jurisdiction, unless "the Constitution of the United States or a treaty thereof or an act of Congress is brought into question and the right claimed thereunder is denied."

The only error assigned by the plaintiff in error which in any way attempts to raise a Federal question is No. 1:

"That the court erred in overruling the plea to the jurisdiction herein, for the reason that this action was instituted and tried at a special term (there being no regular term authorized by law to be held) in the city of Mayaguez, and therefore, by virtue of the provisions of section 670 of the Revised Statutes of the United States, the district court of the United States for Porto Rico had no jurisdiction to try this cause before a jury at such special term of the said court begun and held at the city of Mayaguez aforesaid."

Section 670 of the Revised Statutes of the United States reads as follows:

"At any special term of a circuit court in any district in Indiana, Kentucky, Missouri, North Carolina, Virginia, and Wisconsin, any business may be transacted which might be transacted at any regular term of such court. At any special term of a circuit court in any other district, it shall be competent for the court to entertain jurisdiction of and to hear and decide all cases in equity, cases in error or on appeal, issues of law, motions in arrest of judgment, motion for a new trial, and all other motions, and to award executions and other final process, and to do and transact all other business, and direct all other proceedings, in all causes pending in the circuit court, except trying any cause by a jury, in the same way and with the same effect as the same might be done at any regular session of said court."

We contend, *first*, that section 670 of the Revised Statutes is without any application whatever to the United States district court for Porto Rico, and that therefore no Federal question is involved in this case; and, *second*, that any decision of the lower court regarding section 670 of the Revised Statutes was, at most, but a construction of the terms of the statute and was not a denial of the validity of the statute.

"Where no question is raised as to the validity of a statute of the United States, but merely as to the application of the statute to the case, no Federal question arises."

Colin Cameron, appt., *v.* United States, 146 U. S., 533 (36:1077).

"The substance, therefore, of the assignment of errors, is simply that the court below misconstrued the acts, and the errors which it is sought to have this court review are all of them errors of interpretation. Such error raises no Federal question reviewable by this court."

Adams *v.* Preston, 63 U. S., 22 How., 473 (16:273); Congdon *v.* Goodman, 67 U. S., 2 Black, 574 (17:257); Scott *v.* Jones, 46 U. S., 5 How., 343 (12:181); Smith *v.* Adsit, 83 U. S., 16 Wall., 185 (21:310); Klinger *v.* Missouri, 80 U. S., 13 Wall., 257 (20:365); Murray *v.* Gibson, 56 U. S., 15 How., 421 (14:755); Nichol *v.* Levy, 72 U. S., 5 Wall., 433 (18:596); Jackson *v.* Lamphire, 28 U. S., 3 Pet., 280 (7:679); Withers *v.* Buckley, 61 U. S., 20 How., 84 (15:816); Medberry *v.* Ohio, 65 U. S., 24 How., 413 (16:739); Porter *v.* Foley, 65 U. S., 24 How., 415 (16:740); Commercial Bank of Cincinnati *v.* Buckingham, 46 U. S., 5 How., 343 (12:181); McNulty *v.* California, 149 U. S., 647 (37:883).

State of Conn. *v.* G. M. Woodruff, 153 U. S., 869.

In Snow *v.* United States, 118 U. S., 346, 363 (30:207–209), in which it was contended that a court established by act of Congress and admitted to have a lawful existence and jurisdiction of the case misconstrued the act and went beyond the authority which it conferred, it was held that all that was

drawn in question was whether there was or was not error in the administration of the statute, and not "the validity of an authority exercised under the United States," within the meaning of the act of March 3, 1885, chap. 355.

See also Clugh *v.* Curtis, 134 U. S., 361, 370 (33: 945, 949).

Only those courts are constitutional courts which are organized by Congress within the States; those organized in any of the territories belonging to the United States and not included within a State are called legislative or congressional courts. They may have all the jurisdiction of "district and circuit courts of the United States," but are not such.

Clinton *v.* Englebrecht, 13 Wall., 434.
Reynolds *v.* United States, 98 U. S., 145.
McAllister *v.* United States, 141 U. S., 174.
The Coquitlan, 163 U. S., 346.
United States *v.* McMillan, 165 U. S., 501.

The district courts of the United States, organized in the States under article 3 of the Constitution, are distinct from the circuit courts of the United States, organized in like manner, but under the organic acts of the Territories the court is one only, though exercising the combined jurisdiction of the circuit and district courts of the United States.

See City of Panama, 101 U. S., 453, in which it is said:

"Such jurisdiction of the territorial district courts within the respective districts is made coextensive with both the Federal circuit and district courts, for reasons which will be obvious to any one who will compare the two sections, one with the other, in their practical operation. Two classes of courts are created in the Federal system for the exercise of the necessary original jurisdiction, but in the Territory, as provided in the organic act, there is but one class of courts created for that purpose. Had Congress limited the jurisdiction of the territorial district courts to that exercised by the Federal district courts, then those courts could not have taken cognizance of controversies in patent cases nor of

crimes and offenses against the authority of the United States, where the punishment is death, and if their jurisdiction had been limited to that exercised by the circuit courts, then those courts would have had no cognizance whatever of admiralty and maritime causes, or of seizures on water where the proceeding is according to the course of the admiralty law. * * * Two examples of courts having such jurisdiction are found in the 10th section of the judiciary act, where the Federal district courts in two districts were empowered to exercise jurisdiction in addition to what was conferred by the 9th section of the judiciary act of all other causes, except appeals and writs of error, made cognizable in a circuit court, and with authority to proceed therein in the same manner as a circuit court."

"By section 1910 of the Revised Statutes the district courts of the Territory have the same jurisdiction in all cases arising under the Constitution and laws of the United States as is vested in the circuit and district courts of the United States; but this does not make them circuit and district courts of the United States. They are courts of the Territories, invested for some purposes with the powers of the courts of the United States." * * *

Section 34 of the Foraker act makes the following provision as to terms of court:

* * * "Regular terms of said court shall be held at San Juan, commencing on the second Monday in April and October of each year, and also at Ponce on the second Monday in January of each year, and special terms may be held at Mayaguez at such other stated times as said judge may deem expedient." * * *

And section 35 provides, as to appeals to the Supreme Court of the United States, as follows:

"That writs of error and appeals from the final decisions of the Supreme Court of Porto Rico and the district court of the United States shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the supreme courts of the Territories of the United States, and

such writs of error and appeal shall be allowed in all cases where the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question and the right claimed thereunder is denied; and the supreme and district courts of Porto Rico and the respective judges thereof may grant writs of *habeas corpus* in all cases in which the same are grantable by the judges of the district and circuit courts of the United States."

The word "special," as used in section 34 of the Foraker act, regarding the terms at Mayaguez, was evidently used in contradistinction to "regular" terms, applied to the terms to be held at San Juan and Ponce, in that the *time* of convening terms in the latter cities was *regularly* fixed by the Foraker act itself, while the terms at Mayaguez were left to be *specially* fixed at such times as "the judge may deem expedient."

A case illustrating this use of "special term" is that of Gonzalez *versus* Cunningham, 164 U. S., 613; L. ed., 41, 573—an appeal from the Territory of New Mexico. There was a provision in the law that—

"Said special term shall not conflict with a term of said district court in any other county in the same judicial district. Said terms to be called in the same manner now provided by law for the holding of special terms of the district courts in this Territory." * * *

And the exception to the jurisdiction of the lower court was based on the fact that the court had proceeded with the case at a special term, after the time had commenced for holding a regular term of court, and that the sentence was pronounced after such special term had by the statute lapsed.

The court say:

* * * "From the various provisions of the acts referred to, it appears that no specific duration of either regular or special terms was prescribed by law, but that they were subject, when lawfully commenced, to be continued until ad-

journed by order of court, and that therefore they could not be necessarily determined by the advent of the particular days designated for the commencement of regular terms; and that special terms might be ordered when regular terms failed to be held, and also whenever in the discretion of the judge of any district court a furtherance of justice required it.

"Under section 552, which was section 3 of chapter 26 of the Laws of 1874, when special terms were held because the regular term had failed, it was provided that any such special term should not conflict with the regular term in any other county in the same judicial district, that is, that it should not be so called as to produce a conflict or be held in actual conflict; while by section 3 of chapter 27 of the Laws of 1874, being section 552*a*, no specific limitations were imposed in respect of a special term called thereunder. There was nothing in any of these provisions which controlled the discretion of the trial judge in continuing any special term he may have been holding until a pending case was concluded, and nothing which operated to invalidate the proceedings of such special term because prolonged beyond the day fixed for a regular term." * * *

The *second assignment of error* is "that the court erred in overruling defendant's demurrer to the complaint." (See Record, page 4.)

The Supreme Court has repeatedly held that an exception to the overruling of a demurrer, where the party afterwards pleads to the merits of the case, is not an assignable error. (See case of Campbell *v.* City of Haverhill, 155 U. S., 610; United States *v.* Boyd, 46 U. S., 29; Campbell *v.* Wilcox, 77 U. S., 421. And, furthermore, the demurrer itself was without merit.

Sections 60 and 61 of the Code of Civil Procedure for Porto Rico, adapted in March, 1904, provide as follows regarding recovery for death:

"SEC. 60. A father, or in case of his death, or desertion of his family, the mother, may maintain an action for the injury or death of a minor child, and a guardian for the injury or death of his ward, when such injury or death is

caused by the wrongful act or neglect of another. Such action may be maintained against the person causing the injury or death, or if such person be employed by another person who is responsible for his conduct, also against such other person.

"SEC. 61. When the death of a person, not being a minor, is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death, or if such person be employed by another person who is responsible for his conduct, then also against such other person. *In every action under this and the preceding section such damages may be given as under all the circumstances of the case be just.*"

So that under the provisions of the preceding sections the only limitation for recovery upon the death of a minor is that "such damages may be given as under all the circumstances of the case be just."

As to *assignment of error No. 3,* the record fails to disclose that the answers to the questions excepted to were in any way detrimental to the case of the plaintiff in error.

As to *assignment of error No. 4,* the part of the judge's instruction excepted to is so long and involves so many different statements that counsel is at a loss to know just what statement of law made by the court the plaintiff in error relies upon, and will but cite to the court the sections of the railroad law of Porto Rico which require railroads to maintain a gate and watchman.

Article 8 of the Police Law of Railroads of Porto Rico provides, among other things, "When railroads cross other roads on the same level, gates shall be constructed which shall be closed and only opened when vehicles and cattle cross as provided for in the regulations;" and article 18 of the Regulations for the Application of the Police Law of Railroads provides: "By all possible means, the company shall assure—(1) the maintenance in good condition of the railroad and all its appurtenances, (2) the care and service of the gates in the level crossings." These provisions of the railroad law are

still in force in Porto Rico, there having been no change or amendment in regard to them.

As to *assignment of error No. 5*, "that the court erred in reading from a law book upon the measure of damages, during the course of said charge, to the effect that damages are limited to the loss of comfort and society of the deceased," if the court did read the preceding paragraph to the jury, the error, if any, is one of which the plaintiff in error may not take advantage, as any error there might have been would have been detrimental to the interest of the defendant in error and not to the plaintiff in error. This court has repeatedly held that in order that an appellant may avail himself of an error, it must be material and detrimental to his interest.

Assignments of error Nos. 6 and 7 both violate rule 35 of the Supreme Court, in that they do not set out separately and particularly each error asserted and intended to be urged.

Assignment of error No. 8, "that the court erred in entering judgment in favor of plaintiff and against defendant for the sum of sixteen hundred dollars ($1600.00)," is not an assignable error. This court has repeatedly held that where the error complained of is in effect that the decision was for the wrong party, it is too general in its terms to be reviewed by this court. (See Scholey *v.* Rew, 23 Wall., 331.)

Wherefore counsel for defendant in error respectfully prays that the writ of error be dismissed, or that the judgment of the United States district court for the district of Porto Rico be affirmed.

Respectfully submitted,

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Attorney for Defendant in Error.